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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al.
v.
SHALANDA YOUNG, et al.,
Defendants.

NO. 2:21-cv-00002-JCC
JOINT STIPULATION OF
DISMISSAL WITHOUT
PREJUDICE; ORDER THEREON

Plaintiffs and Defendants in the above-captioned case, by and through their attorneys of record, having conferred, hereby state as follows:

1. On January 4, 2021, Plaintiffs commenced this action (Dkt. # 1) challenging the sale of the Federal Archives and Records Center, located at 6125 Sand Point Way NE, Seattle, Washington, 98115, which houses the National Archives at Seattle (the Seattle Archives facility);

2. On January 7, 2021, Plaintiffs filed a motion for preliminary injunction (Dkt. # 15);

3. On January 25, 2021, Plaintiffs filed their First Amended Complaint (Dkt. # 30) adding additional plaintiffs to the action;

1 4. On February 4, 2021, Defendants filed a motion to dismiss the action for lack of
 2 subject matter jurisdiction (Dkt. # 36). That motion remains pending before the Court.

3 5. On February 16, 2021, in order to preserve the *status quo ante*, the Court granted
 4 Plaintiffs' motion for preliminary injunction and enjoined Defendants from selling the Seattle
 5 Archives facility pursuant to the Federal Assets Sale and Transfer Act of 2016 (FASTA) and
 6 from taking any actions to facilitate or effectuate a sale of the Seattle Archives facility under
 7 FASTA until a final determination on the merits is issued by the Court (Dkt. # 45). A preliminary
 8 injunction does not constitute a determination on the merits of the lawsuit, and Plaintiffs' claims
 9 have not been adjudicated on the merits. The Court determined, however, that the Plaintiffs
 10 "established the requisite elements" of a preliminary injunction, as Plaintiffs proved they were
 11 "'likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of
 12 preliminary relief, that the balance of equities tips in [their] favor, and that an injunction [wa]s
 13 in the public interest.'" (Dkt. # 45 at 2 (quoting *Winter v. Nat'l Res. Def. Council, Inc.*,
 14 555 U.S. 7, 20 (2008)));

15 6. On February 22, 2021, pursuant to a stipulation of the parties, the Court issued an
 16 order (Dkt. # 51) staying this lawsuit for 60 days to afford the federal government the opportunity
 17 to assess the extent to which tribes were consulted on the proposal to sell the Seattle Archives
 18 facility;

19 7. On April 8, 2021, in a letter to the Public Buildings Reform Board (PBRB), the
 20 Office of Management and Budget (OMB) informed the PBRB of its decision to withdraw its
 21 prior approval of the sale of the Seattle Archives facility because "the process that led to the
 22 decision to approve the sale of the Federal Archives and Records Center [wa]s contrary to this
 23 Administration's tribal-consultation policy," (Dkt. # 52-1). OMB further informed the PBRB
 24 that: "Any effort to sell the Federal Archives and Records Center in the future, through any
 25 available and appropriate authority, must comply with at least two substantial requirements.
 26 First, it must be preceded by meaningful and robust tribal consultation, consistent with the

1 President's January 26, 2021 Memorandum on Tribal Consultation. Second, it must proceed
 2 through the appropriate administrative process, based on a new factual record, and must comply
 3 with the attendant substantive and procedural safeguards of that process." (*Id.*);

4 8. On April 16, 2021, pursuant to a stipulation of the parties, the Court issued an
 5 order (Dkt. # 55) further staying this case for three additional weeks to allow the parties time to
 6 discuss the ramifications of OMB's withdrawal of its approval of the sale of the Seattle Archives
 7 facility and to discuss a possible negotiated resolution and directed the parties to submit a joint
 8 status report to the Court on May 10, 2021;

9 9. Plaintiffs continue to contend that the Seattle Archives facility is exempt from
 10 sale under FASTA (Dkts. ## 1, 15, 30, 45). However, Defendants continue to contend that, under
 11 the law, deference is given to the meaning ascribed to the statute by the federal agencies charged
 12 with the administration of the statute;

13 10. In lieu of a status report, the parties submit this Joint Stipulation and Dismissal
 14 Without Prejudice; and

15 11. The parties, having conferred, HEREBY STIPULATE AND AGREE, as follows:

- 16 a. The parties agree that Plaintiffs' claims for relief in its First Amended
 17 Complaint (Dkt. # 30) shall be voluntarily dismissed without prejudice
 18 pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure; and
- 19 b. All parties shall bear their own fees and costs, except that Plaintiff Tanana
 20 Chiefs Conference, Inc., shall recover attorneys' fees of \$10,927.15 pursuant
 21 to the provisions of the Equal Access to Justice Act (EAJA),
 22 28 U.S.C. § 2412. The parties agree that payment of this agreed amount shall
 23 constitute payment in full by Defendants of any and all claims for attorney's
 24 fees, expenses and costs of suit incurred by any party in connection with this
 25 lawsuit. Nothing in this stipulation shall be construed as an admission of
 26 wrongdoing, liability or fault by Defendants, nor shall anything in this

1 stipulation be construed as an admission by Defendants that any action,
2 including any legal position taken by them in this lawsuit, was not
3 substantially justified within the meaning of EAJA.

4 SO STIPULATED.

5 DATED this 25th day of May, 2021.

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ORDER

IT IS SO ORDERED.

DATED this ____ day of May 2021.

JOHN C. COUGHENOUR
Senior United States District Judge

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification to all counsel of record.

DATED this 25th day of May, 2021, at Seattle, Washington.

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